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Implementation of the Directive on Electronic Commerce in Belgium

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Implementation of the Directive on Electronic Commerce in Belgium

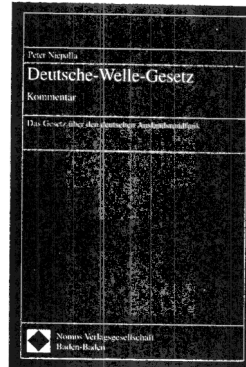
Two Acts on certain legal aspects of information society services, dated 11 March 2003, were adopted in Belgium (*Moniteur belge*, 17 March 2003, http://www.just.fgov.be/mopdf/2003/03/17_2.pdf). The Bill was divided into two Acts, each of them respectively concerning matters governed by articles 77 and 78 of the Constitution (in this general comment, we will mainly refer to the Act dealing with article 78 of the Constitution). These Acts implement the Directive 2000/31/EC of 8 June 2000 on electronic commerce. Actually, they should have been enacted before 17 January 2002 to comply with the transposition delay imposed by article 22 of the Directive. Belgium is more than a year late but is not the last Member State to comply with these European requirements: in France, for instance, the Directive has not been implemented yet: the bill for trust in digital economy was approved by the *Council of Ministers* on January and the *House of Representatives* discussed it on February. The Act should enter into force soon. The Acts are pretty faithful to the Directive. A detailed comment is impossible in a few sentences and further developments will only focus on a few specific topics, which illustrate the main aspects of Belgian legislator's work. To promote and ensure the development of electronic commerce, legislator had to take decisions, especially where the Directive let him some leeway, for instance in the matter of unsolicited commercial communications (spamming). According to article 7 of the Directive, the Member States could choose between an opt-in or an opt-out system.

Belgian Act instituted an opt-in process: commercial message can not be sent without prior consent of the recipient. Notwithstanding, exceptions to this principle can be established by the *King* (i.e. the Government). Sometimes, new legislative techniques had to be used. We refer to article 9 of the Directive. Member States had to ensure that their legal system allows contracts to be concluded by electronic means.

Belgian legislator relied on the „functional equivalent approach“, especially recommended by the UNCITRAL Model Law on Electronic Commerce (1996): the Act provides that any formal legal requirement in the contractual process shall be fulfilled if the functional qualities of this requirement are preserved. On those points, the work of the legislator has to be approved. But, in some cases, we regret the ambiguity of some provisions, which will lead to problems of interpretation. For example, article 3 of the Directive (Internal Market) is construed by some authors as a rule of International Private Law but this opinion is not accepted unanimously. The corresponding provision in Belgian Law is written in a neutral way from which the exact intention of the legislator can not be inferred easily. First decisions of Courts and Tribunals will be expected impatiently and in the meanwhile, it probably will give rise to many doctrinal comments.

Hervé Jacquemin, CRID, Namur.

Deutsche-Welle-Gesetz Kommentar



Peter Niepalla
Deutsche-Welle-Gesetz
Kommentar
Das Gesetz über den
deutschen Auslands-
rundfunk
2003, 505 S., geb.,
125,- €, 212,- sFr,
ISBN 3-7890-8289-9

Der Kommentar erläutert nicht nur ausführlich die **Rechtsgrundlage der Auslandsrundfunkanstalt**, sondern zeigt auch auf, wo für die künftige Entwicklung gesetzlicher Änderungsbedarf besteht.

Im Einzelnen

- analysiert die Kommentierung die verfassungsrechtliche Stellung und innere Organisationsstruktur der DW unter Geltung des Grundrechts der Rundfunkfreiheit
- erklärt sie im einzelnen die Regelungen des DWG, wonach die DW ihre Aufgaben durch Programme in 30 Sprachen erfüllt
- beleuchtet sie die Finanzierung der Bundesrundfunkanstalt im Spannungsverhältnis zwischen Rundfunkautonomie und Budgetrecht des Parlaments.

Neu: Die rundfunkrechtliche Literatur wird ergänzt um eine allgemeinverständliche Darstellung der besonderen Wesensmerkmale des Auslandsrundfunks.

Der besondere Vorteil: Im Anhang sind die in der Rechtspraxis wichtigen internen Regelungen wie Satzung, Finanzordnung u.a. abgedruckt.

Fazit: Das umfassende juristische Nachschlagewerk für Medien- und Rundfunkrechtler, Sendeanstalten, Praktiker der auswärtigen Kulturarbeit, Medienexperten in Verwaltung und Politik und alle am Mediengeschehen Interessierten.

Dr. Peter Niepalla verbindet durch seine langjährige Tätigkeit als Rechtsanwalt im Justitiariat der Deutschen Welle die sich beim Auslandsrundfunk ergebenden speziellen Fragestellungen in Theorie und Praxis auf ideale Weise.